



County of Los Angeles
CHIEF ADMINISTRATIVE OFFICE

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DAVID E. JANSSEN
Chief Administrative Officer

January 6, 2004

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Board of Supervisors

GLORIA MOLINA
First District

YVONNE BRATHWAITE BURKE
Second District

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

Dear Supervisors:

**AN ORDINANCE TO EXTEND THE TERM OF PETROLEUM PIPELINE FRANCHISE
ORDINANCE NO. 11,854, GRANTED TO THE UNITED STATES OF AMERICA, AND
TO EXCLUDE THE TRANSPORTATION OF ANY HAZARDOUS SUBSTANCES OR
HAZARDOUS WASTE, AND TO EXCLUDE THE PROVISIONS FOR
INDEMNIFICATION OF THE COUNTY
(ALL DISTRICTS) (3 VOTES)**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve the amendment to petroleum pipeline franchise Ordinance No. 11,854, granted to the United States of America, to extend the term of the franchise to December 31, 2004, and to exclude the transportation of any hazardous substances or hazardous waste, within the meaning of the "Comprehensive Environmental Response Compensation and Liability Act of 1980," 42 U.S.C. 9601 et seq., and amendments thereto, and to exclude the provisions for indemnification of the County.
2. Introduce, waive reading, and place on your Board's agenda for adoption the accompanying ordinance that implements the above recommendation, becoming effective 30 days therefrom.
3. Find that this project is categorically exempt under the California Environmental Quality Act (CEQA) pursuant to Class 1, Section e of the Environmental Document reporting Procedures and Guidelines adopted by your Board on November 17, 1987, and Section 15061 (b) (3) of the State CEQA Guidelines.

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PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of the recommended action is to extend the term of the petroleum pipeline franchise granted to the United States of America (USA) to December 31, 2004, and to exclude the transportation of any hazardous substances or hazardous waste.

Further, the recommended action excludes the incorporation by reference of a provision in the County Master Pipeline Franchise Ordinance, Ordinance No. 11,696, requiring the franchisee to indemnify the County of Los Angeles (County) because the Anti-Deficiency Act, 31 U.S.C. 1341 (a) (1) restricts officers of the USA from entering into implied contracts for indemnification without an appropriation of funds.

Approving an extension of the term of the USA franchise will provide USA additional time to perform the due diligence necessary to comply with the requirements to file maps and reports showing the location and footage for USA's pipelines that remain in the highways within the unincorporated areas of the County.

Once USA has provided the maps and reports necessary to verify the pipeline locations and footages, the County can negotiate a renewal of the franchise with USA which will include all pipelines owned and operated by USA in unincorporated County areas.

Although the USA cannot agree to indemnify the County, State law enforceable through the Federal Tort Claims Act does provide that the franchisee indemnify the granting entity. Although the indemnity provided at law is not as extensive as the indemnity in Ordinance No. 11,696, this disadvantage is unavoidable when the County grants a franchise to the USA.

IMPLEMENTATION OF STRATEGIC PLAN GOALS

The County of Los Angeles Strategic Plan directs that we provide the public with quality service that is beneficial and responsive (Goal 1). The Board's consent to extend the term of this pipeline franchise is consistent with this goal.

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FISCAL IMPACT/FINANCING

There is no fiscal impact since the existing USA franchise was granted without payment of any franchise fee, except the compliance by USA and its assigns with all the terms and conditions of the franchise and the Los Angeles County Code (Title 16, Division 3A, Chapter 2).

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

In January 1979, your Board granted USA a 25-year petroleum pipeline franchise that will expire February 8, 2004. USA's existing franchise renewed a prior franchise your Board granted to USA for petroleum pipelines USA purchased from Sunset Oil Company in 1945 known as the Norwalk Air Force Defense Six-Inch Oil Pipelines (Norwalk AF Pipelines) now owned by the United States Air Force (USAF).

The Norwalk AF Pipelines consist of two systems containing approximately 22 miles of deactivated pipelines, which are installed in public roads and railroad right-of-ways along two separate pathways once used by USAF to transport turbine fuel from a supply depot in San Pedro to a now-decommissioned Norwalk Fuel Distribution Station located near the intersection of Norwalk Boulevard and Excelsior Drive in the City of Norwalk.

In 1965 the Secretary of Defense created the Defense Logistics Agency (DLA) in order to optimize logistics and reduce duplication. DLA's Defense Energy Support Center (DESC) provides operational control over all military bulk-fuel terminals and pipelines, and centrally manages all fuel needs for the Department of Defense (DOD). DESC supports all military fuel facilities in the Western United States, including the San Pedro Terminal, a major bulk-fuel hub that receives and stores military turbine fuel from suppliers along the West Coast and overseas.

DESC Americas West transports turbine fuel from Long Beach Harbor (Pier 12) to the San Pedro Terminal via the USAF "Pier" pipeline, an active 14-inch and 18-inch pipeline system, and transports the fuel via the USAF "San Pedro to Norwalk" pipeline, an active 10-inch pipeline that connects to a common carrier pipeline system owned and operated by Kinder Morgan Energy Partners (KMEP) (junction in Alameda Street at Dominguez Channel), which distributes fuel throughout California, Nevada and Arizona.

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In conjunction with KMEP, via the active 10-inch San Pedro to Norwalk Pipeline, DESC Americas West supports major DOD customers in California, including March Air Reserve Base, Edwards Air Force Base, Miramar Marine Corps Air Station, San Diego Naval Base, and major customers in Nevada and Arizona, including Nellis Air Force Base, Arizona Marine Corps Air Station and Luke Air Force Base.

Additional active and idle USA pipelines remain in public roadways, including a deactivated segment of the USAF 10-inch San Pedro to Norwalk Pipeline, which follows a northeasterly path from the KMEP junction to the Norwalk Fuel Station, and the idle "Norwalk to El Toro" pipeline owned by the United States Navy (Navy), an idle eight-inch Navy pipeline that follows an easterly path from Norwalk Fuel Station to the decommissioned El Toro Marine Corp Air Station in Orange County. Various active and idle USAF pipelines are located in the Los Angeles and Long Beach Harbor areas, including the active 12-inch Serge pipeline and the idle six-inch "R" and "G" pipelines.

USA has requested to extend the franchise to allow additional time to provide the County franchise reports and maps accurately locating all pipelines in County highways, as required to request your Board's approval of a new 15-year franchise for USA's active turbine fuel pipelines, and to allow USA to coordinate the disposal of its idle pipelines through approved abandonment or sale.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

The recommended Board actions will not impact or adversely affect any current services. The Fire Department and Department of Public Works have reviewed the request and have no objections. County Counsel has reviewed the accompanying ordinance and has approved it as to form.

ENVIRONMENTAL DOCUMENTATION

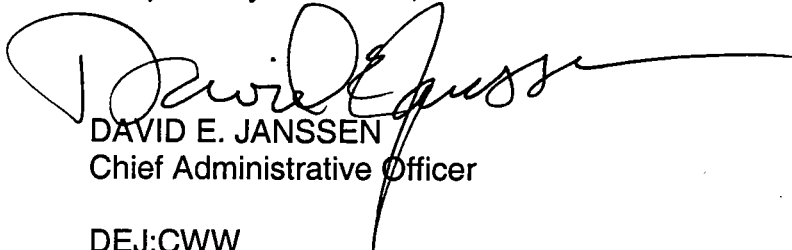
The recommended action is categorically exempt under the California Environmental Quality Act (CEQA) pursuant to Class 1, Section e of the Environmental Document Reporting Procedures and Guidelines adopted by your Board on November 17, 1987, and Section 15061 (b) (3) of the State CEQA Guidelines.

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CONCLUSION

Instruct the Executive Officer, Board of Supervisors, to send an approved copy of this letter, and a copy of the adopted ordinance to United States Army Corps of Engineers, 911 Wilshire Boulevard, Los Angeles, California 90017, Attention: Mr. James Foster, Realty Specialist, and forward approved copies of this letter and the adopted ordinance to the offices of County Counsel, Department of Public Works, Fire Department, Petrochemical Unit, and the Chief Administrative Office, Real Estate Division, 222 South Hill Street, 3rd Floor, Los Angeles, CA 90012.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David E. Janssen", with a long horizontal flourish extending to the right.

DAVID E. JANSSEN
Chief Administrative Officer

DEJ:CWW
CB:RB:cc


c: County Counsel
Fire Department
Department of Public Works

ANALYSIS

This ordinance extends through December 31, 2004, the term of the petroleum pipeline franchise granted to the United States of America, by Ordinance No. 11,854, and amends the franchise to prohibit the transportation of any hazardous substances or hazardous waste within the meaning of the "Comprehensive Environmental Response Compensation and Liability Act of 1980," 42 U.S.C. section 9601 et seq., and amendments thereto. This ordinance further amends the franchise to exclude incorporation by reference of a provision in the County Master Pipeline Franchise Ordinance, Ordinance No. 11,696, requiring the United States of America to indemnify the County, as pursuant to the Federal Anti-Deficiency Act, an officer or employee of the United States of America cannot agree to indemnify the County.

This ordinance acknowledges that within the limits of the Federal Torts Claims Act, 28 U.S.C. sections 2671-2680, the United States of America remains fully responsible for any claim, demand, injury or damage to any person or property resulting from operation of this franchise.

LLOYD W. PELLMAN
County Counsel

By 
KATHLEEN D. FELICE
Senior Deputy County Counsel
Public Works Division

KDF:ia

11/18/03 (requested)

11/18/03 (revised)

ORDINANCE NO. _____

An ordinance to extend through December 31, 2004, the term of the petroleum pipeline franchise granted to the United States of America, by Ordinance No. 11,854, and to prohibit the transportation of any hazardous substances or hazardous waste within the meaning of the "Comprehensive Environmental Response Compensation and Liability Act of 1980," 42 U.S.C. 9601 et seq., and amendments thereto. The ordinance further amends the franchise to exclude incorporation by reference of a provision in the County Master Pipeline Franchise Ordinance, Ordinance No. 11,696, requiring the United States of America to indemnify the County.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Section 1 of Ordinance No. 11,854 is hereby amended to read as follows:

Section 1. The right, privilege, and franchise is granted to the United States of America ("Franchisee"), and its successors and assigns, through December 31, 2004, to lay or construct, reconstruct, ~~from time to time and for twenty-five (25) years~~ to maintain, operate, repair, renew, change the size of, remove or abandon in place pipes and pipelines for the collection, transportation, and distribution of oil, petroleum, gas, gasoline, or other hydrocarbon substances, wet gas, chemicals, mud, steam, water, waste water, and other liquid substances, ~~for any purpose,~~ excluding any hazardous substances or hazardous waste within the meaning of the "Comprehensive

Environmental Response Compensation and Liability Act of 1980," 42 U.S.C. section 9601 et seq., and amendments thereto, together with all manholes, valves, cathodic protection systems, appurtenances, and service connections necessary or ~~convenient~~appropriate for the operation of said pipes or pipelines, including poles, conduits, wires, cables, and other appurtenances and equipment for telegraph or telephone lines or both, necessary or ~~convenient~~appropriate for the Franchisee's business operations, in, under, along, or across any and all highways now or hereafter dedicated to public use in the unincorporated territory of the County of Los Angeles, State of California.

SECTION 2. Section 4. of Ordinance No. 11,854, is hereby amended to read as follows.

Section 4. In addition to the terms and conditions herein, this franchise is granted under the same terms and conditions contained in Article I, Part 2 of Ordinance No. 11,696 of the County of Los Angeles, entitled "An Ordinance Providing Terms and Conditions to be Included in Pipeline Franchises for the Collection, Transportation or Distribution of Gas, Oil, Hydrocarbon and Other Liquid Substances, Hereinafter Granted by the County of Los Angeles," adopted April 11, 1978, as if they were contained in this ordinance., excluding Part 1, Article 1, section 117 as incorporated by reference in Part 2 of said Ordinance No. 11,696, and codified at Los Angeles County Code section

16.52.180, regarding indemnification by Franchisee. Said exclusion is required because agencies of the federal government are prohibited from agreeing to such indemnity provisions under the Anti-Deficiency Act, 31 U.S.C. section 1341(a)(1)(B), which states in pertinent part: "An officer or employee of the United States Government or of the District of Columbia government may not involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law." Notwithstanding the above, within the limits of the Federal Torts Claim Act, 28 U.S.C. sections 2671-2680, and relevant California law as applied thereunder, Franchisee remains fully responsible for any claim, demand, injury or damage to any person or property resulting from operation of this franchise.

In the event the terms and conditions hereof conflict with the terms and conditions of said Ordinance No. 11,696, the terms and conditions hereof shall control.

[USAPetroleumFranchise]